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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 27 1999

U.S. DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY

In the Matter of)
)
WESTERN WIRELESS CORPORATION)
)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER AND)
FOR RELATED WAIVERS TO PROVIDE)
UNIVERSAL SERVICE TO THE CROW)
RESERVATION IN MONTANA)
)

DA 99-1847

CC Docket No. 96-45

To: Common Carrier Bureau

REPLY COMMENTS

Smith Bagley, Inc. ("SBI"), by its attorneys, respectfully submits these Reply Comments in response to Western Wireless Corporation's ("WWC") Petition for Designation as an Eligible Telecommunications Carrier, pursuant to Section 214(e)(6) of the Communications Act, as amended, ("the Act") and for related waivers to provide services eligible for Universal Service support to Crow Reservation, Montana (hereafter "Petition").¹ SBI supports the Petition and urges the Commission to designate WWC as an "eligible telecommunications carrier" ("ETC") for purposes of obtaining support from the Universal Service Fund ("USF") at the earliest possible date.

^{1/} A Public Notice issued by the Common Carrier Bureau on September 10, 1999 (DA 99-1847) invited comment on the Petition by October 12, 1999 and reply comments by October 27, 1999.

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I. Introduction

1. SBI has recently filed with the Commission its own petition for designation as an ETC, to enable it to provide universal service to the federally reserved Native American lands within its Arizona and New Mexico service area.²

2. SBI supports the request of WWC for designation as an eligible telecommunications carrier for purposes of serving Crow Reservation, Montana.

II. The FCC Has Jurisdiction To Grant Western Wireless ETC Status

3. Some Incumbent Local Exchange Carrier's ("ILECs") dispute WWC's contention that the Commission has authority to grant ETC designation for carriers wishing to provide service to Native American lands.³ As SBI stated in its ETC petition, the Commission has previously recognized the provision of service to Native American lands as "not subject to the jurisdiction of a state commission for purposes of 214(e)(6)."⁴ More important, the FCC has determined that it has the ultimate responsibility to effectuate Section 254 of the Act which governs Universal Service at the

^{2/} See Petition for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(6), FCC 97-419, filed June 2, 1999.

^{3/} See e.g., Comments of Project Telephone Company, Inc. and Range Telephone Cooperative, Inc., pp. 10-24.

^{4/} See *Designation of Fort Mojave Telecommunications, Inc., et al.*, 13 FCC Rcd 4547, 4549, (Com. Car. Bur. 1998).

behest of Congress.⁵ The Commission's plenary authority over Universal Service in conjunction with the FCC's decision in *Fort Mojave* clearly removes jurisdiction from the states, thus negating any argument to the contrary filed by the various ILECs.

III. Grant of the ETC Designation Is In The Public Interest

4. SBI agrees with WWC's argument that the designation of CMRS providers as eligible telecommunications carriers is in the public interest. Specifically, SBI believes that designation of CMRS carriers as ETCs facilitates the provision of additional basic telephone services at affordable prices on the reservations they wish to serve. Native American lands have a particularly low telephone service penetration rate and are among the highest cost areas to serve, therefore additional support is needed for any carrier wishing to provide these areas with service. Without the assistance of federal USF funding, wireless carriers cannot provide service into these high cost areas where ILECs are receiving USF support.

5. Although wireless carriers such as SBI and WWC may be able to offer competitive services to some areas of a particular state, the lack of funding becomes a significant barrier to expansion of service to more remote and rural areas such as Native American lands. The expense of expanding service into high cost areas is such that many carriers would simply choose to forego the opportunity to reach potential customers in such areas. However, a decision to avoid extension

^{5/} See *Federal-State Joint Board on Universal Service (Report and Order)*, 12 FCC Rcd 8776, 9192 (1997).

of service to rural and high cost areas is not consistent with the purpose of the Act which is to foster the availability of competitive telecommunications services throughout the country.⁶

6. Remote reservations territories have a second handicap, which is that residents have among the lowest per capita income in the nation, of ten below \$5,000. Even where companies such as SBI or WWC can provide usable signal, residents in such circumstances simply cannot afford a telephone. The public interest demands effective solutions to this problem and wireless carriers are in the best position to deliver relief.

IV. The ILEC's Are Attempting to Stifle Competition

7. WWC's interpretation of Section 214(e) of the Act is correct. Some ILEC's argue that WWC has not demonstrated that it is eligible for ETC designation because WWC cannot currently offer the proposed services.⁷ This interpretation renders it impossible for a wireless carrier to receive ETC designation unless it is already offering ubiquitous universal service comparable to that of the ILEC. Such a reading would effectively thwarts competition by creating a catch 22 for carriers who otherwise are willing to compete. Nothing in the statute or rules requires a carrier to offer services before attaining ETC designation. It is enough that the carrier is capable of offering the services and commits to do so. The Commission must not close the door to carriers who are capable of competing and who are willing to make the commitment to provide the requisite services.

^{6/} Report and Order In the Matter of Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

^{2/} *See, e.g.*, Comments of Project Telephone Company, Inc. and Range Telephone Cooperative, Inc., pp. 24-27.

7. The ILECs interpretation of Section 214(e) only serves to thwart competition in high cost and low income areas. The purpose of the Act is to foster the availability of competitive telecommunications services throughout the country, particularly to rural and high cost areas, including Native American lands. Ensuring that these areas have not only basic telephone service, but also a variety of telecommunications providers to choose from, is of particular concern to the Commission, and has been repeatedly acknowledged by each of the Commissioners. For this reason, wireless carriers such as SBI and WWC wishing to serve Native American lands should be considered equal to that of ILECs for ETC designation.

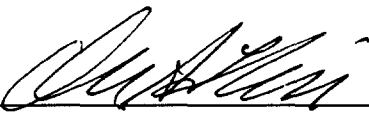
V. Conclusion

Nothing in the comments filed in this proceeding and the SBI proceeding precludes the FCC from moving forward on these applications expeditiously. It is extraordinary that there could be any opposition to any carrier's proposal to bring service to areas which have for decades been neglected

by the very same companies opposing the SBI and WWC requests. The Commission must expeditiously grant ETC status to WWC, SBI, and any capable carrier seeking to serve Native Americans living on reservations.

Respectfully submitted,

SMITH BAGLEY, INC.

By: 

David A. LaFuria

B. Lynn F. Ratnavale


Its Attorneys

Lukas, Nace, Gutierrez & Sachs Chartered
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

October 27, 1999

CERTIFICATE OF SERVICE

I, Kimberly Verven an employee of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that on this 27th day of October 1999, that I have caused a copy of the attached "Reply Comments" to be delivered to the persons listed below:


Kimberly Verven

Lawrence Strickling, Chief*
Common Carrier Bureau
Federal Communications Commission
445 12th Street S.W., Room 5-C450
Washington, DC 20554

Lisa Zaina, Acting Deputy Chief *
Common Carrier Bureau
Federal Communications Commission
445 12th Street S.W. Room 5-C451
Washington, D.C. 20554

Larry Povich *
Common Carrier Bureau
Federal Communications Commission
445 12th Street S.W. Room 6-A130
Washington, D.C. 20554

Sheryl Todd*
Accounting Policy Division
445 12th Street S.W., Room 5-A523
Washington, D.C. 20554

Michelle Farquhar
David L. Sieradzki
Ronnie London
Hogan and Hartson, L.L.P
555 13th Street N.W.
Washington, D.C. 20037-1350

International Transcription Service*
1231 20th Street N.W.
Washington, D.C. 20554

*Via Hand-Delivery